

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

BRET ROBERT GERBER, M.D.)

Case No. 10-2013-235201

Physician's and Surgeon's
Certificate No. G 79213)

Respondent)
_____)

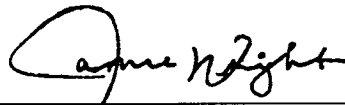
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 27, 2015.

IT IS SO ORDERED: July 28, 2015.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, J.D., Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 JOSEPH F. MCKENNA III
Deputy Attorney General
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **BRET ROBERT GERBER, M.D.**
15 **501 Washington Street, Suite 600**
San Diego, CA 92103-2239

16 **Physician's and Surgeon's**
17 **Certificate No. G 79213,**

18 Respondent.

Case No. 10-2013-235201

OAH No. 2014070975

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California. She brought this action solely in her official capacity as such and is represented in
25 this matter by Kamala D. Harris, Attorney General of the State of California, by Joseph F.
26 McKenna III, Deputy Attorney General.

27 2. Respondent Bret Robert Gerber, M.D. (respondent) is represented in this proceeding
28 by attorney Robert W. Frank, Esq., whose address is: 1010 Second Ave., Ste. 2500, San Diego,

1 CA, 92101-4959.

2 3. On or about June 22, 1994, the Medical Board of California issued Physician's and
3 Surgeon's Certificate No. G 79213 to Bret Robert Gerber, M.D. (respondent). The Physician's
4 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
5 herein and will expire on January 31, 2016, unless renewed.

6 **JURISDICTION**

7 4. On April 24, 2014, Accusation No. 10-2013-235201 was filed before the Medical
8 Board of California (Board), Department of Consumer Affairs, and is currently pending against
9 respondent. A true and correct copy of the Accusation and all other statutorily required
10 documents were properly served on respondent on April 24, 2014. Respondent timely filed his
11 Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 10-
12 2013-235201 is attached hereto as Exhibit A and incorporated herein by reference as if fully set
13 forth herein.

14 **ADVISEMENT AND WAIVERS**

15 5. Respondent has carefully read, fully discussed with counsel, and fully understands the
16 charges and allegations in Accusation No. 10-2013-235201. Respondent has also carefully read,
17 fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and
18 Disciplinary Order.

19 6. Respondent is fully aware of his legal rights in this matter, including the right to a
20 hearing on the charges and allegations in Accusation No. 10-2013-235201; the right to be
21 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
22 against him; the right to present evidence and to testify on his own behalf; the right to the
23 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
24 the right to reconsideration and court review of an adverse decision; and all other rights accorded
25 by the California Administrative Procedure Act and other applicable laws, having been fully
26 advised of same by his attorney of record, Robert W. Frank, Esq.

27 7. Having the benefit of counsel, respondent hereby voluntarily, knowingly, and
28 intelligently waives and gives up each and every right set forth above.

1 **CULPABILITY**

2 8. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
4 No. 10-2013-235201 and that he has thereby subjected his Physician's and Surgeon's Certificate
5 No. G 79213 to disciplinary action.

6 9. Respondent agrees that if he ever petitions for early termination or modification of
7 probation, or if an accusation and/or petition to revoke probation is filed against him before the
8 Medical Board of California, all of the charges and allegations contained in Accusation No. 10-
9 2013-235201 shall be deemed true, correct and fully admitted by respondent for purposes of any
10 such proceeding, or any other licensing proceeding involving respondent in the State of
11 California, or elsewhere.

12 **CONTINGENCY**

13 10. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the
14 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
15 submitted to the Board for its consideration in the above-entitled matter and, further, that the
16 Board shall have a reasonable period of time in which to consider and act on this Stipulated
17 Settlement and Disciplinary Order after receiving it. By signing this stipulation, respondent fully
18 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
19 prior to the time the Board considers and acts upon it.

20 11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
21 and void and not binding upon the parties unless approved and adopted by the Board, except for
22 this paragraph, which shall remain in full force and effect. Respondent fully understands and
23 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
24 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
25 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify
26 the Board, any member thereof, and/or any other person from future participation in this or any
27 other matter affecting or involving respondent. In the event that the Board does not, in its
28 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the

1 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
2 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
3 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
4 be rejected for any reason by the Board, respondent will assert no claim that the Board, or any
5 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
6 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

7 **ADDITIONAL PROVISIONS**

8 12. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
9 to be an integrated writing representing the complete, final and exclusive embodiment of the
10 agreements of the parties in the above-entitled matter.

11 13. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
12 including copies of the signatures of the parties, may be used in lieu of original documents and
13 signatures and, further, that such copies shall have the same force and effect as originals.

14 14. In consideration of the foregoing admissions and stipulations, the parties agree the
15 Board may, without further notice to or opportunity to be heard by respondent, issue and enter the
16 following Disciplinary Order:

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 79213 issued
19 to respondent Bret Robert Gerber, M.D. (respondent) is revoked. However, the revocation is
20 stayed and respondent is placed on probation for two (2) years from the effective date of this
21 Decision on the following terms and conditions.

22 1. **CONTROLLED SUBSTANCES – ABSTAIN FROM USE**. Respondent shall
23 abstain completely from the personal use or possession of controlled substances as defined in the
24 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
25 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
26 apply to medications lawfully prescribed to respondent by another practitioner for a bona fide
27 illness or condition.

28 Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall

1 notify the Board or its designee of the: issuing practitioner's name, address, and telephone
2 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
3 telephone number.

4 If respondent has a confirmed positive biological fluid test for any substance (whether or
5 not legally prescribed) and has not reported the use to the Board or its designee, respondent shall
6 receive a notification from the Board or its designee to immediately cease the practice of
7 medicine. The respondent shall not resume the practice of medicine until final decision on an
8 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
9 probation shall be filed by the Board within 15 days of the notification to cease practice. If the
10 respondent requests a hearing on the accusation and/or petition to revoke probation, the Board
11 shall provide the respondent with a hearing within 30 days of the request, unless the respondent
12 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or
13 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice
14 shall not apply to the reduction of the probationary time period.

15 If the Board does not file an accusation or petition to revoke probation within 15 days of the
16 issuance of the notification to cease practice or does not provide respondent with a hearing within
17 30 days of a such a request, the notification of cease practice shall be dissolved.

18 2. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
19 biological fluid testing, at respondent's expense, upon request of the Board or its designee.
20 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
21 follicle testing, or similar drug screening approved by the Board or its designee. Prior to
22 practicing medicine, respondent shall contract with a laboratory or service approved in advance
23 by the Board or its designee that will conduct random, unannounced, observed, biological fluid
24 testing. The contract shall require results of the tests to be transmitted by the laboratory or
25 service directly to the Board or its designee within four hours of the results becoming available.
26 Respondent shall maintain this laboratory or service contract during the period of probation.

27 A certified copy of any laboratory test result may be received in evidence in any
28 proceedings between the Board and respondent.

1 If respondent fails to cooperate in a random biological fluid testing program within the
2 specified time frame, respondent shall receive a notification from the Board or its designee to
3 immediately cease the practice of medicine. The respondent shall not resume the practice of
4 medicine until final decision on an accusation and/or a petition to revoke probation. An
5 accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the
6 notification to cease practice. If the respondent requests a hearing on the accusation and/or
7 petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days
8 of the request, unless the respondent stipulates to a later hearing. A decision shall be received
9 from the Administrative Law Judge or the Board within 15 days unless good cause can be shown
10 for the delay. The cessation of practice shall not apply to the reduction of the probationary time
11 period.

12 If the Board does not file an accusation or petition to revoke probation within 15 days of the
13 issuance of the notification to cease practice or does not provide respondent with a hearing within
14 30 days of a such a request, the notification of cease practice shall be dissolved.

15 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
16 the effective date of this Decision, respondent shall enroll in a professionalism program, that
17 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
18 Respondent shall participate in and successfully complete that program. Respondent shall
19 provide any information and documents that the program may deem pertinent. Respondent shall
20 successfully complete the classroom component of the program not later than six (6) months after
21 respondent's initial enrollment, and the longitudinal component of the program not later than the
22 time specified by the program, but no later than one (1) year after attending the classroom
23 component. The professionalism program shall be at respondent's expense and shall be in
24 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

25 A professionalism program taken after the acts that gave rise to the charges in the
26 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
27 or its designee, be accepted towards the fulfillment of this condition if the program would have
28 been approved by the Board or its designee had the program been taken after the effective date of

1 this Decision.

2 Respondent shall submit a certification of successful completion to the Board or its
3 designee not later than 15 calendar days after successfully completing the program or not later
4 than 15 calendar days after the effective date of the Decision, whichever is later.

5 4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
6 respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
7 Chief Executive Officer at every hospital where privileges or membership are extended to
8 respondent, at any other facility where respondent engages in the practice of medicine, including
9 all physician and locum tenens registries or other similar agencies, and to the Chief Executive
10 Officer at every insurance carrier which extends malpractice insurance coverage to respondent.
11 Respondent shall submit proof of compliance to the Board or its designee within 15 calendar
12 days.

13 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

14 5. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, respondent is
15 prohibited from supervising physician assistants.

16 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
17 governing the practice of medicine in California and remain in full compliance with any court
18 ordered criminal probation, payments, and other orders.

19 7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
20 under penalty of perjury on forms provided by the Board, stating whether there has been
21 compliance with all the conditions of probation.

22 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
23 of the preceding quarter.

24 8. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

26 Respondent shall comply with the Board's probation unit and all terms and conditions of
27 this Decision.

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1 Address Changes

2 Respondent shall, at all times, keep the Board informed of respondent's business and
3 residence addresses, email address (if available), and telephone number. Changes of such
4 addresses shall be immediately communicated in writing to the Board or its designee. Under no
5 circumstances shall a post office box serve as an address of record, except as allowed by Business
6 and Professions Code section 2021(b).

7 Place of Practice

8 Respondent shall not engage in the practice of medicine in respondent's or patient's place
9 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
10 facility.

11 License Renewal

12 Respondent shall maintain a current and renewed California physician's and surgeon's
13 license.

14 Travel or Residence Outside California

15 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
16 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
17 (30) calendar days.

18 In the event respondent should leave the State of California to reside or to practice
19 respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
20 departure and return.

21 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
22 available in person upon request for interviews either at respondent's place of business or at the
23 probation unit office, with or without prior notice throughout the term of probation.

24 10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
25 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
26 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is
27 defined as any period of time respondent is not practicing medicine in California as defined in
28 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month

1 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
2 time spent in an intensive training program which has been approved by the Board or its designee
3 shall not be considered non-practice. Practicing medicine in another state of the United States or
4 Federal jurisdiction while on probation with the medical licensing authority of that state or
5 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
6 not be considered as a period of non-practice.

7 In the event respondent's period of non-practice while on probation exceeds 18 calendar
8 months, respondent shall successfully complete a clinical training program that meets the criteria
9 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
10 Disciplinary Guidelines" prior to resuming the practice of medicine.

11 Respondent's period of non-practice while on probation shall not exceed two (2) years.

12 Periods of non-practice will not apply to the reduction of the probationary term.

13 Periods of non-practice will relieve respondent of the responsibility to comply with the
14 probationary terms and conditions with the exception of this condition and the following terms
15 and conditions of probation: Obey All Laws; and General Probation Requirements.

16 11. COMPLETION OF PROBATION. Respondent shall comply with all financial
17 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
18 completion of probation. Upon successful completion of probation, respondent's certificate shall
19 be fully restored.

20 12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
21 of probation is a violation of probation. If respondent violates probation in any respect, the
22 Board, after giving respondent notice and the opportunity to be heard, may revoke probation and
23 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
24 Probation, or an Interim Suspension Order is filed against respondent during probation, the Board
25 shall have continuing jurisdiction until the matter is final, and the period of probation shall be
26 extended until the matter is final.

27 13. LICENSE SURRENDER. Following the effective date of this Decision, if
28 respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy

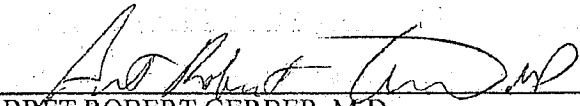
1 the terms and conditions of probation, respondent may request to surrender his or her license.
2 The Board reserves the right to evaluate respondent's request and to exercise its discretion in
3 determining whether or not to grant the request, or to take any other action deemed appropriate
4 and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent
5 shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its
6 designee and respondent shall no longer practice medicine. Respondent will no longer be subject
7 to the terms and conditions of probation. If respondent re-applies for a medical license, the
8 application shall be treated as a petition for reinstatement of a revoked certificate.

9 14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
10 with probation monitoring each and every year of probation, as designated by the Board, which
11 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
12 California and delivered to the Board or its designee no later than January 31 of each calendar
13 year.

14 ACCEPTANCE

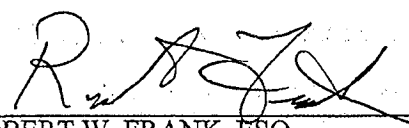
15 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
16 discussed it with my attorney, Robert W. Frank, Esq. I understand the stipulation and the effect it
17 will have on my Physician's and Surgeon's Certificate No. G 79213. I enter into this Stipulated
18 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
19 bound by the Decision and Order of the Medical Board of California.

20
21 DATED: 11th June, 2015


BRET ROBERT GERBER, M.D.
Respondent

23 I have read and fully discussed with respondent Bret Robert Gerber, M.D., the terms and
24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
25 I approve its form and content.

26 DATED: 6-11-15


ROBERT W. FRANK, ESQ.
Attorney for Respondent

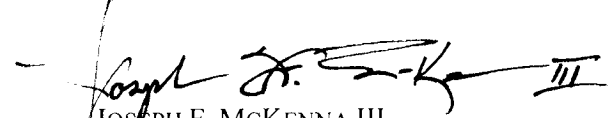
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: *June 12, 2015*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General


JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

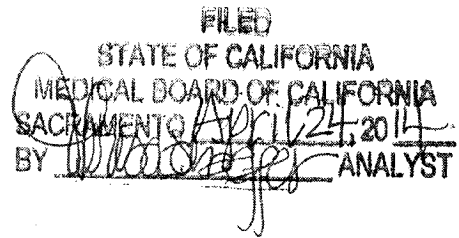
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Exhibit A

Accusation No. 10-2013-235201

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
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8 *Attorneys for Complainant*



10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 10-2013-235201

14 **BRET ROBERT GERBER, M.D.**
15 **501 Washington Street, Suite 600**
San Diego, CA 92103

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate No.**
17 **G79213**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs, and not otherwise.

25 2. On or about June 22, 1994, the Medical Board of California issued Physician's and
26 Surgeon's Certificate Number G79213 to Bret Robert Gerber, M.D. (respondent). The
27 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
28 charges brought herein and will expire on January 31, 2016, unless renewed.

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4. Section 2227 of the Code states:

“(1) Have his or her license revoked upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

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///

1 5. Section 2234 of the Code states:

2 "The board shall take action against any licensee who is charged with
3 unprofessional conduct. In addition to other provisions of this article,
4 unprofessional conduct includes, but is not limited to, the following:

5 "...

6 "(f) Any action or conduct which would have warranted the denial of a
7 certificate.

8 "..."

9 6. Unprofessional conduct under Code section 2234 is conduct which breaches the rules
10 or ethical code of the medical profession, or conduct which is unbecoming to a member in good
11 standing of the medical profession, and which demonstrates an unfitness to practice medicine.
12 (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

13 7. Section 2238 of the Code states:

14 "A violation of any federal statute or federal regulation or any of the statutes or
15 regulations of this state regulating dangerous drugs or controlled substances constitutes
16 unprofessional conduct."

17 8. Section 2239 of the Code states:

18 "(a) The use or prescribing for or administering to himself ... of any
19 controlled substance; or the use of any of the dangerous drugs specified in Section
20 4022 ... to the extent, or in such a manner as to be dangerous or injurious to the
21 licensee, or to any other person or to the public, or to the extent that such use
22 impairs the ability of the licensee to practice medicine safely or more than one
23 misdemeanor or any felony involving the use, consumption, or self-administration
24 of any of the substances referred to in this section, or any combination thereof,
25 constitutes unprofessional conduct. The record of the conviction is conclusive
26 evidence of such unprofessional conduct.

27 "..."

28 ///

9. Section 1360, title 16, of the California Code of Regulations states:

“For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.”

FIRST CAUSE FOR DISCIPLINE

(Use of Controlled Substances)

10. Respondent has subjected his Physician's and Surgeon's Certificate No. G79213 to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he used controlled substances, as more particularly alleged hereinafter:

A. On or about August 24, 2013, at approximately 2016 hours, Mono County Sheriff's Department (MCSD) Deputy C.C. was on duty, in full uniform, and assigned to patrol in the City of Bridgeport, California. At that approximate time, Deputy C.C. observed a Winnebago drive past his location and noted that the front license plate was missing on the vehicle in violation of Vehicle Code section 5200, subdivision (a). Deputy C.C. initiated a traffic enforcement stop of the Winnebago and contacted the driver, who was positively identified by a California driver's license as the respondent. Respondent stated that he owned the Winnebago. Deputy C.C. then asked respondent for paperwork for the Winnebago, and he also asked for identification from the three (3) other occupants of the motor home. Deputy C.C. then checked the license status of respondent and

1 also ran warrant status on all four (4) occupants. While Deputy C.C. waited for
2 MCSO dispatch to check license and warrant status, a K-9 unit conducted an
3 exterior sniff of the Winnebago at which point the K-9 alerted to the driver's side
4 area near the driver's side door. Deputy C.C. advised respondent of the K-9's alert
5 to the Winnebago and asked respondent if any illegal drugs were located inside the
6 motor-home. Respondent admitted that he had some "ecstasy" inside a brown
7 wooden box inside the Winnebago. Deputy C.C. then directed all occupants to
8 exit the Winnebago and he conducted a search of the motor-home's interior.
9 Deputy C.C. located the brown wooden box inside the Winnebago and inspected
10 its contents, which included, a clear plastic vacuum sealed bag containing
11 psilocybin mushrooms¹ and thirty-five (35) capsules containing a tan colored
12 powder in various plastic bags. Deputy C.C. believed that the powder in the
13 capsules was consistent with MDMA.² Deputy C.C. also searched the areas above
14 the driver and passenger seats and discovered two (2) bags containing a powder he
15 believed to be MDMA, and a "green military type bag." Inside the green bag,
16 Deputy C.C. discovered two (2) small blue plastic baggies containing a powder he
17 believed to be MDMA powder. Deputy C.C. also discovered a small amount of
18 what he believed to be marijuana inside the green bag. Based upon the totality of
19 the facts and circumstances, Deputy C.C. arrested respondent for violation of
20 Health & Safety Code section 11377, subdivision (a), possession of a controlled
21 substance. After being read his Miranda rights, respondent waived his rights and
22 agreed to answer Deputy C.C.'s questions. Respondent confirmed that the brown

23 ¹ The plastic bag containing the mushrooms had "21 g" written on the exterior of the bag.
24 Psilocybin is listed as a Schedule I controlled substance under Health & Safety Code section
25 11054, subdivision (d), subsection (18). Possession of psilocybin mushrooms can be criminally
charged under Health & Safety Code section 11377, subsection (a).

26 ² 3,4-methylenedioxy-methamphetamine (MDMA / also known by the street names
27 "ecstasy" and "molly") is not a controlled substance, but it is substantially similar to the chemical
28 structure of 3,4-methylenedioxy-amphetamine (MDA), which is a Schedule I controlled
substance. Possession of MDMA can be criminally charged as an analog of MDA or
methamphetamine, under Health & Safety Code section 11377, subsection (a).

1 wooded box belonged to him and identified its contents to Deputy C.C.

2 Respondent stated that the powdery substance was MDMA inside the thirty-five
3 (35) capsules, with the exception of one bag labeled "B 22-25." Respondent
4 identified this particular substance as "2C-B" and described it as being similar to
5 MDMA, but stated it had more hallucinogenic effects than MDMA. Respondent
6 also confirmed that the mushrooms were, in fact, psilocybin mushrooms.

7 Regarding the green bag, respondent denied ownership of the bag and stated that it
8 belonged to his friend, "Jimmy." Respondent stated that "Jimmy" had dropped off
9 the bag at his house for respondent to transport to the Burning Man Festival and
10 that he planned to return the bag to "Jimmy" when he saw him at the festival.

11 B. On or about August 29, 2013, the Mono County District Attorney's
12 Office sent respondent a letter indicating that the Office had received a law
13 enforcement complaint alleging respondent had violated Health & Safety Code
14 section 11377, subsection (a), possession of a controlled substance. The letter
15 stated that based upon a review of respondent's case, he was deemed eligible to
16 participate in the Mono County District Attorney's Pre-Filing Diversion Program
17 (PFDP) in lieu of his court appearance to answer to the criminal charge. The letter
18 further stated that so long as respondent successfully completed the PFDP's six (6)
19 month program and completed the terms and conditions,³ his case would be closed
20 and there would be no conviction recorded on his criminal and/or driving record.
21 On or about September 9, 2013, respondent returned the PFDP participation form
22 to the Mono County District Attorney's Office indicating he would comply with
23 the terms and conditions of the program and provide proof of completion within
24 six (6) months.

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26
27 ³ The terms and conditions required respondent to enroll in a drug education/counseling
28 program (minimum of twelve (12) sessions), twelve (12) hours of community service, and obey
all laws.

1 C. On or about January 9, 2014, Investigator Holmes of the Medical Board
2 of California interviewed respondent at the Board's district office in San Diego.
3 During the interview, respondent acknowledged that he has a history of
4 recreational drug use ("mushrooms" and "ecstasy") and that he currently uses
5 "once or twice a year." Respondent further stated that when he does use
6 recreational drugs he is not on call, and he does not have any patient contacts or
7 responsibilities. When asked if he felt it was appropriate for a medical doctor to
8 consume illegal narcotics during his personal time, respondent replied, "I would
9 say no ... it could get you in a lot of trouble." However, respondent also stated
10 that he was not "morally ... against the small use of narcotics in appropriate
11 circumstances." Respondent also admitted during the interview that he had used
12 "ecstasy" at the Burning Man Festival following his arrest in Mono County on
13 August 24, 2013.

14 D. On or about January 29, 2014, lab testing was conducted by the
15 California Department of Justice, Bureau of Forensic Services, and items seized
16 from respondent's Winnebago following his arrest were analyzed. Lab testing
17 confirmed the pills contained MDMA and the mushrooms contained psilocybin.
18 Additional testing was done on a bag believed to contain MDMA powder. Lab
19 testing of the powder found that it contained cocaine.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Violation of Statute Regulating Controlled Substances)**

22 11. Respondent has further subjected his Physician's and Surgeon's Certificate No.
23 G79213 to disciplinary action under sections 2227 and 2234, as defined by section 2238, of the
24 Code, in that he violated the statutes or regulations of this state regulating dangerous drugs or
25 controlled substances, as more particularly alleged in paragraph 10, above, which is hereby
26 incorporated by reference and realleged as if fully set forth herein.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(General Unprofessional Conduct)**

3 12. Respondent has further subjected his Physician's and Surgeon's Certificate No.
4 G79213 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the
5 Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical
6 profession, or conduct which is unbecoming a member in good standing of the medical
7 profession, and which demonstrates an unfitness to practice medicine, as more particularly
8 alleged in paragraph 10, above, which is hereby incorporated by reference and realleged as if
9 fully set forth herein.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Medical Board of California issue a decision:

- 13 1. Revoking or suspending Physician's and Surgeon's Certificate No. G79213, issued to
14 respondent Bret Robert Gerber, M.D.;
- 15 2. Revoking, suspending or denying approval of respondent Bret Robert Gerber, M.D.'s
16 authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 17 3. Ordering respondent Bret Robert Gerber, M.D. to pay the Medical Board of
18 California the costs of probation monitoring, if placed on probation; and
- 19 4. Taking such other and further action as deemed necessary and proper.

20 DATED: April 24, 2014


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant